

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS

Plaintiff

V.

CARDIAC SCIENCE, INC.

## Defendants

Civil Action: 04-30126-MAP

Judge Michael A. Ponsor

**DEFENDANT COMPLIANT CORPORATION'S MEMORANDUM IN OPPOSITION  
TO PLAINTIFF'S MOTION FOR JUDICIAL NOTICE OF APPEAL**

On October 24, 2006, Plaintiff, Donald C. Hutchins, filed a motion requesting that this Court take judicial notice of his attempts to appeal the decision of the Cuyahoga County, Ohio, Court of Common Pleas awarding summary judgment to Compliant Corporation. Although it is true that Hutchins filed a Notice of Appeal in that matter on October 17, 2006, the Ohio Court of Appeals *sua sponte* dismissed Hutchins' appeal on October 23, 2006 for lack of jurisdiction. See Exhibit A.

Although the court could have dismissed the appeal for any of several reasons, it dismissed Hutchins' appeal because he filed his Notice of Appeal after he had filed his ill-fated

Notice of Removal in federal court in Cleveland.<sup>1</sup> Thus, the state courts lacked jurisdiction over the matter at the time Hutchins filed his Notice of Appeal. *Id.*

Moreover, it should be noted that the judgment from which Hutchins appeals was entered by the state court on July 19, 2006. *See* Motion for Judicial Notice of Judgment Entries [Docket No. 207]. Accordingly, Hutchins' Notice of Appeal was filed well outside the thirty-day period within which Hutchins could appeal that judgment. *See* Ohio R. App. P. 4(A). Therefore, Hutchins' Notice of Appeal was improper for several reasons and, in any event, is no longer pending.

Respectfully submitted,

*s/ Jeffrey J. Lauderdale*

WILLIAM E. COUGHLIN (0010874)  
COLLEEN MORAN O'NEIL (0066576)  
JEFFREY J. LAUDERDALE (0074859)  
CALFEE, HALTER & GRISWOLD LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, Ohio 44114  
(216) 622-8200  
(216) 241-0816 (facsimile)

JOHN J. EGAN (151680)  
EGAN, FLANAGAN & COHEN, P.C.  
PO Box 9035  
67 Market Street  
Springfield, MA 01102-9035  
(216) 622-8200  
FAX (216) 241-0816

Attorneys for Defendant,  
Compliant Corporation

---

<sup>1</sup> As set forth in Compliant's Motion for Judicial Notice of Order of Remand [Docket No. 230], the U.S. District Court for the Northern District of Ohio has since remanded the action to state court because the Notice of Removal was filed two years too late and because the state court litigation had already concluded (with judgment entered against Hutchins).

**CERTIFICATE OF SERVICE**

I certify that, on October 25, 2006, I electronically filed a copy of the foregoing Defendant Compliant Corporation's Memorandum in Opposition to Motion for Judicial Notice of Appeal and that parties to the case, registered with the Court's electronic filing system, will receive electronic notice of such filing. A copy of the foregoing was also served upon the following via first-class U.S. mail on today's date:

Donald C. Hutchins  
1047 Longmeadow Street  
Longmeadow, Massachusetts 01106  
Pro Se

s/ Jeffrey J. Lauderdale  
One of the Attorneys for Defendant,  
Compliant Corporation